

**MINUTES**  
**Independence Planning Commission/Board of Zoning Appeals**  
**Tuesday, September 6, 2016**  
**Veterans Room, Memorial Hall 5:30 p.m.**

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**Call to Order**

**Planning Commissioners Present**

Steve McBride, Mary Schmidt, Darnell Lawrie, Tony Holmes, Mary Jo (Dancer) Meier\*, Philip Umlauf, Nick McCollam\* and Jim Hardy.

**Planning Commissioners Absent**

John Faller

\*Outside Appointments are not on the Board of Zoning Appeals

**Staff Present**

Kelly Passauer, Assistant City Manager/Zoning Administrator

**Visitors Present**

Jamie Miller and Austin Fine

**a. Consider approving minutes of the August 2, 2016 meeting.**

Tony Holmes made a motion to approve the minutes from the August 2, 2016 meeting. Mary Jo Meier seconded the motion to approve the minutes. Motion carried 8-0.

**Planning Commission**

**b. Consider a request for a conditional use permit for a daycare at 1318 W. Hickory Street.**

Staff provided the following staff report to the board in written form prior to the meeting:

This item was tabled from the previous meeting due to concerns of neighbors regarding fencing. The applicant was not present. The applicant was advised of the concerns and I have asked her to be available to address this issue at the meeting. Below follows the information previously provided:

***Summary***

The Planning and Zoning Commission has received a request for a conditional use permit from Jamie Miller and Austin Fine for a daycare at 1318 W. Hickory Street.

City Zoning Code Section 403.0 defines a day care facility as follows:

*Day care facility. Any place, home or institution which receives four or more children under the age of 18 years for any part of the 24-hour day for compensation; provided, however, this definition shall not include public and private schools organized, operated or approved under the laws of the state, custody of children fixed by a court of competent jurisdiction, children related by blood or marriage, to the day care provider, caring for children within an institutional building while their*

*parents or legal guardians are attending services, meetings or classes or engaged in church activities.*

Appendix “A” of the Zoning Ordinance allows a day care facility as a permitted use in the C-1 and C-2 districts. Day care facilities are allowed as a conditional use in the A-1, R-1, R-2, R-3, R-4, R-5, O/P and C-3 zones. Day care facilities are not permitted in the M-1 and M-2 zones.

### ***Conditional Use Permit***

The zoning ordinance in section 901.1 (page 87) describes the purpose of a conditional use as:

*“...those types of uses which are considered by the City to be essentially, desirable, necessary or convenient to the community but which by their nature or in their operation have:*

- 1) a tendency to generate excessive traffic,*
- 2) a potential for attracting a large number of persons to the area of the use thus creating noise or other pollutants,*
- 3) a detrimental effect on the value of potential development of other properties in the neighborhood, or*
- 4) an extraordinary potential for accidents or danger to the public health or safety.*

*Such conditional uses cannot be allowed to locate as a ‘right’ on any parcel of land within certain districts without consideration of existing conditions at the proposed locations and of properties neighboring the specific site considered, nor without adequate and sufficient safeguards, when necessary, to lessen the impact of adverse effects.”*

### ***Staff Report***

Article X of the Zoning Ordinance addresses special provisions applying to miscellaneous conditional uses:

#### ***1001.0. Purpose.***

*1001.1. Purpose: In granting a conditional use, the city may impose such conditions, safeguards and restrictions upon the premises benefited by the conditional use as may be necessary to reduce or minimize any potentially injurious effect of such conditional uses upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations. Any lessening or subverting of those limitations and requirements constitutes a variance and must be treated accordingly. The following additional conditions shall be a requirement for the approval of the following conditional uses*

Section 610 and 1003 address the minimum provisions the Planning Commission should consider when authorizing a day-care facility in a residential district:

*610.0. Family day care homes.*

*610.1. Definition: A "family day care home" shall be defined as any facility for the care of four or more children, but no more than ten children, including the homeowner's or resident's children, on a professional basis, and subject to state licensing, which is operated out of the residence in which the owner resides.*

*610.2. [Home occupation license.] Each family day care home must obtain a home occupation license and comply with the restrictions, limitations and requirements contained in 605.0 except as modified herein:*

- a. Said facility shall be allowed one sign, not to exceed 18 inches by 36 inches in dimension, which shall be attached to the house.*
- b. Outdoor storage of materials shall be permitted insofar as such materials or equipment are utilized as part of the day care operation.*
- c. The primary resident of the dwelling must operate the facility, who need not be an owner of the dwelling.*
- d. Said facility shall be exempt from all off-street parking requirements included in 701.0*
- e. Children at play on the exterior of the house shall not be considered visible evidence of the business as provided by section 605.1 f*

*610.3. Special conditions*

- a. No day care home may operate in an apartment or duplex*
- b. Each applicant for a home occupation license under this section shall be licensed or registered by the State of Kansas prior to receiving such home occupation license.*
- c. Any family day care home or facility shall be operated in a manner that will not adversely affect other properties and uses in the area.*

### ***1003.0. Day care facilities for more than four children.***

*1003.1. Special conditions: Day care facilities for more than four children shall meet the following provisions when authorized as a conditional use in any residential district:*

- a. City, county and state standards All day care facilities shall be licensed by the state and shall meet all city, county and state health department requirements pertaining to facilities, equipment and other features*
- b. Loading zone: A loading zone capable of accommodating one car for every ten children shall be provided in addition to the required parking area in order to provide for easy pickup and discharge of passengers.*
- c. Operation: Any day care facility shall be operated in a manner that will not adversely affect other properties and uses in the area*
- d. Screening required: Any day care facility located in a building other than a residential dwelling or any residential dwelling used for a day care facility for seven or more children shall provide a visual screen along all property lines abutting any residential use*

In addition to the above special conditions required by the zoning code, the Planning Commission has the authority to place additional conditions on the site that they deem necessary to protect the best interests of the City, the surrounding property and to achieve the objectives of the ordinance.

City staff has reviewed the sites regarding the above special conditions and wishes to provide the following:

- a. *City, county and state standards:* The applicant would be required to meet all City, county and state standards which includes receiving a State daycare license and a City occupation license.
- b. *Loading zone:* One off-street loading zone for every ten children is required by code. However, if the daycare facility is only licensed for nine children or less an off-street loading zone is not required.
- c. *Operation:* City staff is not aware of any issues in the operation of this day care that would adversely affect adjoining property owners.
- d. *Screening required:* Screening is only required for seven or more children, if this facility is licensed for six children or less then no screening is required.

In considering those types of uses which may be desirable, necessary or convenient to the community, the Commission should review and make recommendations based in part on 901.1.

Additionally, the decision of the Planning Commission to recommend approval or denial of the proposed conditional use shall be based on the following criteria (902.2):

- a. *The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitation.*
- b. *The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public.*
- c. *The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.*
- d. *The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate use of the neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:*
  - 1. *The location, nature and height of buildings, structures, walls and fences on the site, and*
  - 2. *The nature and extent of landscaping and screening on the site.*
- e. *Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations (article VII).*

- f. Adequate utility, drainage, and other such necessary facilities have been or will be provided.*
- g. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.*

#### ***Action by the Planning Commission***

Any recommendations regarding a conditional use permit for the subject properties shall be based on Section 902.2 previously outlined in this report. After considering any public comments the Planning Commission may either approve or deny the requests. If the requests are approved the applicants must be required to meet the special conditions required for a day care facility within a specified period of time in addition to any other conditions the Planning Commission wishes to require. Following your action, the application and your recommendation will be forwarded to the City Commission at which time they will have 30 days to adopt, modify or deny the Planning Commission's recommendation.

#### ***Staff Recommendation***

City staff recommends granting the conditional use permit with the following conditions:

1. The applicant must meet all the "special conditions" set forth in Section 1003.1 a, b, c and d of the Zoning Code as follows:
  - a. City, county and state standards: All day care facilities shall be licensed by the state and shall meet all city, county and state health department requirements pertaining to facilities, equipment and other features.*
  - b. Loading zone: A "hard surfaced" loading zone capable of accommodating one car for every ten children shall be provided within one year in addition to the required parking area in order to provide for easy pickup and discharge of passengers.*
  - c. Operation: Any day care facility shall be operated in a manner that will not adversely affect other properties and uses in the area.*
  - d. Screening required: Any day care facility located in a building other than a residential dwelling or any residential dwelling used for a day care facility for seven or more children shall provide a visual screen along all property lines abutting any residential use. The applicant will have one year to meet this requirement.*
2. The conditional use permit is not transferable to another property owner or to another location.
3. The applicant must be in compliance with all City codes and must continue to be in compliance with all City codes. This would include the requirement to acquire a City occupation license which must be renewed annually.

If any of the above conditions are not met the conditional use permit will no longer be valid. The basis of staff's recommendation is that granting the conditional use permit is consistent with the criteria "a through g" of Section 902.2 of the zoning code.

Mary Jo Meier asked the applicant how many children she was licensed to care for. Jamie Miller indicated 10, however, she only has 6 currently. A motion was made by Steve McBride and seconded by Tony Holmes to recommend approving the conditional use permit for a daycare at 1318 W. Hickory Street with the conditions recommended by staff. The motion carried 8-0.

### **Board of Zoning Appeals**

- c. Consider a request for variance from the number of parking spaces required for a church in a C-2 zoned district at 413-419 East Main Street.**

#### ***Overview of Variance Requested***

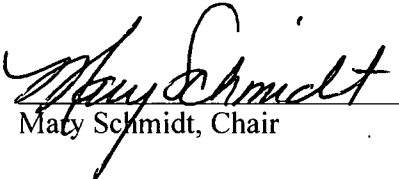
The Board of Zoning Appeals received an application from Leonhard Caflisch, representing New Family Church in Christ to grant a variance from the number of parking spaces required for a church in a C-2 zoned district at 413-419 East Main Street. There was an error on the notification prepared by staff. Therefore, this hearing is being republished and will be on the October agenda.

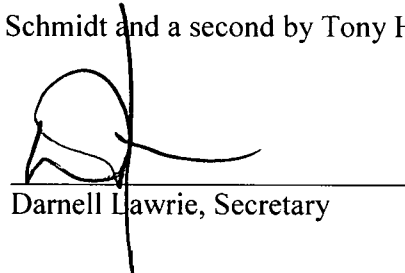
- d. Resignation of John Faller.**

Staff advised that John Faller resigned his position September 3, 2016 on the Planning Commission/Board of Zoning Appeals. Mary Schmidt made a motion to recommend appointing Mary Jo Meier to the Planning Commission/Board of Zoning Appeals inside City position; and advertise the outside City position. Mary Jo (Dancer) Meier had previously filled the outside City appointment, however, she has moved inside the City limits. The motion was seconded by Darnell Lawrie and passed 7-0 with Mary Jo Meier abstaining.

### **Adjournment**

The meeting was adjourned with a motion by Mary Schmidt and a second by Tony Holmes. The motion carried 8-0.

  
Mary Schmidt, Chair

  
Darnell Lawrie, Secretary